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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

TROY ANDERSON,

Defendant and Appellant.

A110477

**(San Francisco County
Super. Ct. No. 2116593)**

Troy Anderson appeals from an order revoking his probation and sentencing him to four years in prison. Anderson's principal contention on appeal is that his due process rights were violated because the People's motion to revoke his probation did not provide him with sufficient written notice of the charges against him. He also contends that he was entitled to a separate written statement of the trial court's reasons for revoking his probation and that the trial court should have released to him the complaining witness's psychiatric records.

We conclude that the documents attached to the People's motion to revoke provided Anderson with constitutionally adequate notice of the charges against him. We further conclude that the written reporter's transcript of the trial court's ruling on the motion to revoke satisfies the requirement that Anderson receive a written statement of reasons. Finally, we find no error in the trial court's refusal to release the complaining witness's confidential psychiatric records. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Anderson was placed on probation on August 29, 2003, after pleading guilty to possession of cocaine base for sale and admitting one prior conviction. The terms of his probation required that he “obey all laws” and that he not possess any drugs without prescription.

The Motion to Revoke

On March 19, 2004, the San Francisco District Attorney filed a motion to revoke Anderson’s probation. In the motion, the assistant district attorney alleged that “the defendant has violated the conditions of probation as stated [in] 1) the forthcoming supplemental probation report, and 2) the attached San Francisco Police report No. 040 311 221.” The attached San Francisco Police Department “Incident Report” documented an incident that occurred on March 16, 2004.

Although the prosecution and the defense presented sharply diverging accounts of what occurred on that date, there was agreement on the central facts relevant to this appeal. Around midnight on March 16, 2004, a woman named Aiesha S. approached Anderson on the street. Aiesha later accompanied Anderson to his hotel room, where she remained until the next morning. During her stay in Anderson’s hotel room, Aiesha smoked crack cocaine. While in Anderson’s room, Anderson and Aiesha also engaged in sexual intercourse. Aiesha testified that she had told Anderson that she did not intend to have sex with him, but that Anderson had forced himself on her and raped her. Anderson claimed that the encounter was consensual and that Aiesha had in fact seduced him.

The Probation Revocation Proceedings

Aiesha reported the incident to the police, who took her to the hospital. She was examined by the rape trauma center at the hospital and given pain medication and antibiotics. Because she informed the hospital staff that she was feeling suicidal, Aiesha was admitted to the psychiatric department.

In the course of the court proceedings prior to revocation of Anderson’s probation, the trial court and counsel repeatedly discussed the basis for the motion to revoke. For example, when the trial court denied Anderson’s motion for release on his own

recognizance, it referred to the “alleged rape” as a “very, very serious allegation,” and noted that “the underlying alleged rape case [is] going to be heard on Friday.” When the revocation hearing commenced on August 27, 2004, the trial court and counsel discussed the witnesses who were expected to testify, and defense counsel said that the prosecutor had told him that “she was calling the victim and that’s it.” The discussion among the trial judge and counsel focused on the testimony of the “alleged victim.”

Aiesha took the stand and testified regarding the incident in Anderson’s hotel room, and her testimony centered on her charge that Anderson had raped her. She stated that she had approached Anderson on the street to buy some crack cocaine and that he had invited her to his hotel room. Aiesha then went with Anderson to the room, where she began using crack cocaine. She also testified that while she was in the room, she saw Anderson sell drugs to individuals who came to the door and that he had smoked marijuana in her presence. Although Aiesha told Anderson that she did not want to have sex with him, Anderson pushed her down on the bed and forced her to engage in both vaginal and anal intercourse. She later asked Anderson if she could go to the bathroom down the hall, which he permitted, but when she came out of the bathroom and attempted to escape, he refused to let her go and dragged her back to the hotel room. She finally left the hotel after Anderson fell asleep.

At the close of the hearing, the prosecutor argued that Anderson was in violation of his probation. She stated, “Not only did he rape her, did he sodomize her, he falsely imprisoned her and he was selling crack cocaine throughout, as well as using controlled substances himself.” Defense counsel did not object to the prosecutor’s argument regarding Anderson’s drug use or his sale of crack cocaine. Instead, he argued that Aiesha was not credible because of her heavy drug use and because her statements on the stand had contradicted her statements to the investigator. The trial judge found that Anderson had committed a “willful violation of probation.”

The trial court later reopened the revocation hearing because it was concerned about the possible existence of a tape of Aiesha’s 911 call to the police. When the hearing continued on October 19, 2004, the 911 tape was played and Anderson took the

stand to testify about the March 16, 2004, incident with Aiesha. During cross-examination, the prosecutor asked Anderson why he had failed to report to his probation officer. Defense counsel objected to the question on the grounds of relevance, stating, “It’s not part of the allegations.” The trial court agreed with defense counsel that it was not part of the allegations. Defense counsel continued, “The allegation is specifically the rape allegation, it’s not the non-reporting. I haven’t been noticed of that.” The trial court then sustained defense counsel’s objection.

The Trial Court’s Ruling

At the end of the hearing, the trial court made a lengthy ruling on the rape and sodomy charges. It stated:

“I found the defendant’s testimony, in many respects, not truthful, and not credible. [¶] I will also state for the record that I have reviewed his testimony from two days ago this morning. I have also reviewed [Aiesha’s] testimony. I have reviewed the 911 tape. I have reviewed her statements to the inspector. I have reviewed the medical records that are under seal. There is absolutely no evidence that I have before me that she is a paranoid schizophrenic suffering from auditory hallucinations as a result of her crack cocaine use. [¶] I have also reviewed the supplemental report, and I am making a finding as the trier of fact that [Aiesha] was credible. [¶] I have had an opportunity close up to view her and to view Mr. Anderson. To view the way each of them testified and how they testified, as well as the contents of their testimony. And as the trier of fact, I have to say I find [Aiesha] credible, and I find her statements consistent with all of the other evidence. [¶] And there is quite a lot [of] evidence now in this case, even though it’s simply a motion to revoke probation. And I find Mr. Anderson’s statements not credible. [¶] I find that [Aiesha] was honest about her drug use. And it was extensive. I also find that simply because she has a mental illness does not mean that she cannot testify honestly and truthfully. And it doesn’t mean that she is not aware of being raped. [¶] I find that simply because she uses crack cocaine, as many people do, and as both counsel know, in this building it doesn’t mean that people who use crack cocaine cannot be honest, cannot be straightforward, cannot be aware of any trauma or violence they are

suffering. [¶] Perhaps in some instances, they can't be aware of it, but there is no evidence in this case that [Aiesha] did not know what was going on around her. In fact, the medical records corroborate what she said, and she's not –

[Defense counsel]: Is your Honor relying on medical records?

The Court: No, but you asked me to review them for whether or not she was delusional. And what I am saying is I don't find, in any respect, that [Aiesha] was delusional or hallucinating, as I said before, or that she was unable to perceive the events around her. [¶] But even further, I'm relying on her testimony, her demeanor, the way she presented herself, the contents of what she said on the stand. And I am finding that she was truthful. So I am finding by an – and I am finding that despite her testimony of being bipolar, that she understood what was happening to her in that room and she was able to testify about it. [¶] I find no reason to believe, otherwise given the credibility and the way she presented herself, despite the fact that she used crack cocaine over a period of time. [¶] I'm seeing no evidence to lead me to believe otherwise as I review all of the evidence in this case, so I am finding by a preponderance of the evidence that there is a willful violation of probation by Mr. Anderson.”

The trial court denied defense counsel's request for a clarification as to what evidence it found to be consistent with Aiesha's testimony. It also denied defense counsel's request for written findings.

At the conclusion of the hearing, the trial court found that Anderson was in violation of the terms of his probation and sentenced him to the mid-term of four years on his underlying conviction. Anderson filed his notice of appeal on November 8, 2004.

DISCUSSION

In this appeal, Anderson asserts that the trial court made three errors that denied him due process of law. His first and principal claim is that he was denied due process because the motion to revoke his probation did not provide constitutionally adequate notice of the charges against him. He also claims that he was entitled to a separate, written statement of the trial court's reasons for revoking his probation. Finally, he argues that the trial court violated his due process rights because it refused to allow him

access to records of the complaining witness's psychiatric treatment. We will address each of these arguments in turn.

A. *Notice Requirements in Probation Revocation Proceedings.*

A probationer facing revocation of probationary status is entitled to written notice of the claimed violations of the terms of his or her probation. (*Black v. Romano* (1985) 471 U.S. 606, 612; *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782;¹ *People v. Vickers* (1972) 8 Cal.3d 451, 458.) If the prosecution presents unnoticed grounds at the revocation hearing, the probationer's due process rights may be violated because the probationer will have had no opportunity to prepare a defense against the unnoticed charges. (See, e.g., *People v. Mosley* (1988) 198 Cal.App.3d 1167, 1174 (*Mosley*).) Although the United States Supreme Court has held that due process requires that a probationer facing revocation be accorded certain procedural protections, a probation revocation hearing is not a criminal trial, and it "does not require the full panoply of procedural safeguards" associated with such a trial. (*Black v. Romano, supra*, 471 U.S. at p. 613.)

B. *Anderson Received Adequate Notice of the Charges Upon Which the Motion to Revoke Was Based.*

Anderson correctly notes that the People's motion to revoke does not itself detail the charges against him, but rather refers to the attached police report and forthcoming supplemental probation report for a description of the offenses. He concedes that the attached reports contain "averments that could support a number of bases for probation revocation," including "the alleged rape of Aiesha S[.]" But according to Anderson, the assertions in the attached reports "are insufficient to provide the constitutionally-required 'written notice' of the claimed violations of probation, and therefore appellant's constitutional due process rights were violated by the lack of notice in these

¹ In *Gagnon v. Scarpelli*, the United States Supreme Court held that due process requires that a probationer be given a revocation hearing under the conditions specified in *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*). In *Morrissey*, the court had held that due process requires that a parolee facing revocation of parole status be accorded certain procedural protections, including "written notice of the claimed violations of parole." (*Id.* at p. 489.)

proceedings.” As we shall explain, Anderson received sufficient notice for due process purposes because the documents attached to the People’s motion to revoke clearly outlined the rape charge upon which the trial court relied in revoking his probation.

1. *Notice of the Charges Upon Which Revocation Is Sought Need Not Be Contained in the Motion to Revoke Itself.*

Anderson asserts that the notice was “constitutionally insufficient *ab initio*, because it was based on documents incorporated by reference which contained information that could support more than one basis for revocation.” To the extent that Anderson argues that he received constitutionally insufficient notice because the details of the charges were contained in the attached incident reports and supplemental probation report – as opposed to being set forth in the motion to revoke itself – his challenge must fail. As many federal cases have held, constitutionally adequate notice may be predicated upon the attached report of the defendant’s probation officer. (E.g., *U.S. v. Chatelain* (2d Cir. 2004) 360 F.3d 114, 122-123 [defendant received adequate notice of charges underlying motion to revoke probation where information was contained in probation officer’s memorandum attached to motion]; *U.S. v. Kirtley* (7th Cir. 1993) 5 F.3d 1110, 1113 [defendant received notice of charges from probation officer’s motion]; *U.S. v. Venable* (D.D.C. 2006) 416 F.Supp.2d 64, 79 [defendant received adequate notice from probation office memorandum]; *U.S. v. Flynn* (D.N.H. 1994) 844 F.Supp. 856, 859 [defendant received adequate notice from probation officer’s petition on probation and supervised release and from government’s prehearing brief].) The grounds upon which the People intended to rely in revoking Anderson’s probation may be ascertained readily from the police incident report and from the supplemental probation report. It is therefore of no consequence that the grounds were contained in documents attached to the People’s motion, rather than in the body of the motion itself.

2. *Anderson’s Right to Notice Was Not Violated Merely Because the Police Incident Report and Supplemental Probation Report Contained Information Regarding Multiple Violations of Probation.*

Anderson also complains that the incident report and supplemental probation report contained information that permitted the prosecutor to argue more than one basis

for revocation. We do not view this as a problem. It is entirely possible that in the course of the events described in these documents Anderson committed multiple violations of the terms of his probation. In such circumstances, we see no reason why the People should not be free to argue that probation should be revoked on the basis of one or more of the claimed violations. (Cf. Pen. Code, § 1203.2, subd. (a) [court may revoke or terminate probation if it “has reason to believe . . . that the person has violated *any of the conditions* of his or her probation,” italics added].) Indeed, the United States Supreme Court cases upon which Anderson relies seem to contemplate that a defendant might receive notice of more than one violation. (See *Black v. Romano*, *supra*, 471 U.S. at p. 612 [“written notice of the claimed *violations* of his probation,” italics added]; *Morrissey*, *supra*, 408 U.S. at p. 489 [“written notice of the claimed *violations* of parole,” italics added].) We therefore find no merit to Anderson’s argument that he was somehow deprived of adequate notice because the documents supporting the People’s motion to revoke alleged more than one possible probation violation.

3. *The Record Makes Clear That Anderson Had Adequate Notice of the Rape Charge That Was the Basis for Revocation.*

It also appears beyond dispute that Anderson had adequate notice of the charge that served as the basis for the trial court’s decision to revoke his probation. The record makes plain that the People’s case below focused from the outset on Anderson’s alleged rape of Aiesha. The March 19, 2004, motion to revoke stated that it was based on “1) the forthcoming supplemental probation report, and 2) the attached San Francisco Police report No. 040 311 221.” The attached police report describes the incident as “Rape, Forcible.” The report then details the encounter between Anderson and Aiesha and notes that Anderson “demanded to have sex with her,” that “[Aiesha] cried and told him that she did not want to have sex with him,” and that Aiesha “stated that [Anderson] forced himself on her” and “penetrated her in her vagina and anus.” The supplemental probation report, filed on April 2, 2004, stated that “the basis for the District Attorney’s motion” was Anderson’s arrest for Penal Code sections 236 (false imprisonment), 261,

subdivision (a)(2)² (forcible rape), 286, subdivision (a) (sodomy), and 1203.2 (revocation of probation). The probation officer explained that “Troy Anderson does not appear to be a suitable candidate for probation, because of the seriousness of the crime, *an alleged rape* and his continued involvement with drugs.” (Italics added.)

The transcript of the proceedings below likewise bears out the focus on the rape allegation, and it indicates clearly that Anderson’s counsel was well aware of the charges that formed the basis of the motion to revoke. In its ruling denying Anderson’s motion for release on his own recognizance, the trial court referred specifically to the “alleged rape” as a “very, very serious allegation” and noted that “the underlying alleged rape case [is] going to be heard on Friday[.]” In a subsequent discussion about which witnesses might testify, both counsel and the court referred repeatedly to “the victim” – Aeisha S.

After an initial hearing on the motion on August 27, 2004, the trial court reopened the matter on September 1, 2004, because it was concerned about the possible existence of a tape of the victim’s 911 call to the police. Defense counsel had requested the tape, but it had not been produced by the prosecution. When the hearing resumed on October 19, the court heard the recording of the 911 call that Aeisha had made to the police. Anderson also took the stand and presented his version of the incident with Aeisha S. During cross-examination, defense counsel objected when the prosecutor asked Anderson why he had not reported to his probation officer. Defense counsel objected on the grounds of relevance, asserting “It’s not part of the allegations. . . . *The allegation is specifically the rape allegation*, it’s not the non-reporting. I haven’t been noticed of that.” (Italics added.) The court sustained defense counsel’s objection. As defense counsel’s objection makes clear, he was well aware of the rape allegation upon which the prosecution relied as the basis for its motion to revoke.

Thus, the record before us reflects that at every step of the proceedings below, Anderson’s counsel knew the People were seeking revocation of probation based on the

² The probation report actually refers to “262(a)(2) . . . PC.” This appears to be a typographical error, as section 262, subdivision (a)(2) concerns rape of a person who is the spouse of the perpetrator.

alleged rape of Aiesha S. Any suggestion that Anderson did not receive constitutionally adequate notice is simply unsupported by the record.

4. *The Basis of the Trial Court's Decision Is Clear from the Record.*

Contrary to Anderson's contentions, we have no trouble discerning from the record the trial court's reasons for revoking his probation. The transcript reflects that the trial court grounded its decision on a finding that Anderson had raped Aiesha. In her oral ruling after the close of the evidence, the trial judge focused on Aiesha's testimony, testimony that concerned the alleged rape. The trial judge stated specifically that she found the victim's testimony credible. The court also found that the victim's mental illness "doesn't mean that she is not aware of being raped." It further explained that simply because Aiesha S. used crack cocaine did not mean that she "cannot be aware of any trauma or violence [she was] suffering." In short, the trial court concluded that the victim "understood what was happening to her in that room and she was able to testify about it." We think this oral ruling leaves little doubt that the trial court revoked Anderson's probation because it found by a preponderance of the evidence that he had raped Aiesha. As a consequence, we reject Anderson's assertion that "this court cannot tell from this record why the [trial] court revoked probation[.]"

5. *Case Law Does Not Support Anderson's Notice Claims.*

Anderson devotes considerable time in his brief to a discussion of the few California cases involving the requirement of notice in the context of probation revocation hearings. Our review of those cases reveals that they do not support Anderson's notice argument.

Courts have found violations of the notice requirement when, at the probation revocation hearing, the prosecution has sought to justify revocation on the basis of new charges for which no notice has been provided. (See *People v. Self* (1991) 233 Cal.App.3d 414, 419 [notice requirement violated where trial court allowed prosecution to amend revocation petition at revocation hearing]; *Mosley, supra*, 198 Cal.App.3d at pp. 1170, 1174 [notice requirement violated where prosecution initially sought revocation based on rape charge but raised probationer's consumption of alcohol as additional

ground for revocation at hearing].) The case before us is fundamentally different from these cases. As we have explained, the rape charge for which Anderson's probation was revoked was clearly part of the People's original motion. Unlike the cases upon which Anderson relies, Anderson did receive notice of the charges that formed the basis for revoking his probation. The notice that he received was therefore fully consistent with due process.

Anderson also asks that we "reconsider" the holding in *People v. Felix* (1986) 178 Cal.App.3d 1168, and contends that *Felix* was wrongly decided. In *Felix*, our colleagues in Division Three held that a probationer's due process rights were not violated when the prosecution raised unnoticed offenses at the probation revocation hearing. (*Felix, supra*, 178 Cal.App.3d at p. 1172.) The trial court in that case had offered to continue the revocation hearing to give defense counsel the opportunity to prepare a defense against the unnoticed charges, but defense counsel did not avail himself of the trial court's offer. (*Ibid.*) Accordingly, the court held that the probationer's due process rights were not violated because the trial court had "provided a constitutionally sufficient safeguard of appellant's due process rights and preserved the fundamental fairness of the proceedings" (*Ibid.*) Anderson asserts *Felix* was wrongly decided, because no other court has ever held that the written notice requirement "could be waived or forfeited through failure to take advantage of a proffered continuance or in any other way."

We see no need to address the holding in *Felix*. The facts of that case are in no way similar to those of the case before us. Unlike *Felix*, ours is not a case in which the prosecution sought to proceed on the basis of unnoticed charges. And we do not ground our holding on any finding that Anderson waived or forfeited his right to written notice.³ *Felix* is therefore simply inapposite, and we need not comment on it further.

³ The People do argue that Anderson has waived his claim that he lacked adequate notice of the charges upon which revocation was based. The People correctly point out that Anderson's counsel did not object to any lack of specificity in the motion to revoke itself. Defense counsel's only objection to lack of notice came at the revocation hearing and did not concern the rape charge. When the prosecutor asked Anderson why he had failed to report to his probation officer, defense counsel complained that he had not been notified of the nonreporting allegation, although Anderson's failure to report had been noted in

C. *The Written Transcript of the Trial Court’s Oral Ruling Satisfies the Requirement That Anderson Receive a Written Statement of the Reasons for Revocation of His Probation.*

Defendant claims that he was denied due process because the trial court refused his request for a written statement of its reasons for revoking his probation. This claim appears to embrace two related, but distinct, arguments. First, defendant argues that he was entitled to a written statement from the trial judge specifying the reasons for revocation. Second, although he acknowledges that the trial court did make a statement on the record in which it made many findings, defendant claims that the transcript of the trial court’s findings does not make plain what the trial court’s grounds were, and thus “proper appellate review is impossible.” We disagree.

We may dispense quickly with defendant’s claim that due process requires that he receive a separate written statement of reasons. Although neither party has cited the case to us, this Division’s opinion in *People v. Moss* (1989) 213 Cal.App.3d 532 long ago resolved that issue adversely to Anderson. In that case we held “that a reporter’s transcript of a court’s oral statement of reasons for revoking probation satisfies the due process requirement of a written statement as to the evidence relied on and the reasons for revocation.” (*Id.* at p. 533; accord, *People v. Ruiz* (1975) 53 Cal.App.3d 715, 717; *People v. Scott* (1973) 34 Cal.App.3d 702, 708.) *Moss* explained that “[i]f the reporter’s transcript of probation revocation proceedings contains a statement of evidence and reasons that permits full appellate review as to the propriety of revocation, it cannot reasonably be said that the absence of a formal written statement has deprived the

the supplemental probation report. Given these facts, the People’s waiver argument has some force. (See 2 Cohen, *The Law of Probation and Parole* (2d ed. 1999) Initiation of Revocation Proceedings: Arrest and Notice, § 23:41, p. 23-60 [“Without a *timely* objection to improper notice, the revocation may be upheld on a waiver theory.”], italics added.) Nevertheless, while we agree with the People that an appellate court generally will not consider procedural defects where no objection was made below (e.g., *People v. Saunders* (1993) 5 Cal.4th 580, 590), in this case we need not rest our decision on waiver, for the record amply demonstrates that Anderson received constitutionally adequate notice.

defendant of due process.” (*Id.* at p. 534.) Here, as Anderson admits, the court gave its findings on the record, and its oral findings were transcribed. Thus, his due process rights were not violated by the trial court’s refusal to draft a formal, separate written statement of its reasons.

Anderson’s claim that the transcript does not permit proper appellate review is also without merit. We explained in our discussion of Anderson’s notice argument that the trial court’s statement makes plain that it found that Anderson had raped Aiesha and that it was revoking his probation on that basis. That conclusion necessarily leads us to reject Anderson’s argument that the lack of a written statement somehow impedes our review. The trial court’s statement on the record leaves us with no doubt as to its reasons for revoking Anderson’s probation. In short, “[t]he transcript reveals the basis of the court’s decision, and [Anderson] does not contend the decision was unsupported by the evidence or was flawed in any other respect.” (*Moss, supra*, 213 Cal.App.3d at pp. 534-535.)

D. *The Trial Court Committed No Error in Refusing to Release the Victim’s Psychiatric Records.*

Anderson also complains that the trial court violated his due process rights when it refused to allow him access to the victim’s psychiatric records. He contends that “review of these documents was necessary to the defense that Aiesha was psychotic and an unreliable narrator,” and thus due process requires that he be afforded access to the records. Anderson asserts that the records of Aiesha S.’s admission to San Francisco General Hospital “might bear on Aiesha’s credibility issues” and that “these bare facts establish a prima facie right in the defense to review the contents of her medical records[.]”

Anderson cites no legal authority establishing such a “prima facie right” to access to these records, and we are aware of none. San Francisco General Hospital submitted the records in question to the court pursuant to a subpoena issued by defense counsel. In its covering letter, the hospital explained that it believed that the records contained

material protected by Welfare and Institutions Code section 5328.⁴ Anderson does not dispute that the records are protected by this provision, but he claims that they must be released to him as part of his due process right to see the evidence against him.⁵

It is true that a witness's mental illness or emotional problems may be relevant to the witness's credibility, "and a witness may be cross-examined on that subject, *if such illness affects the witness's ability to perceive, recall, or describe the events in question.*" (*People v. Gurule* (2002) 28 Cal.4th 557, 591-592, italics added.) Such is not the case here. The trial court specifically found that Aiesha was a credible witness despite her admitted drug use and mental problems. The trial judge conducted an in camera review of the records Anderson seeks, and she found nothing to indicate that Aiesha was delusional, hallucinating, or unable to perceive the events around her. There is thus no basis from which one might conclude that the victim's mental problems affected her "ability to perceive, recall, or describe the events in question." (*Gurule, supra*, 28 Cal.4th at p. 592.)

Moreover, even if one were to assume that it was error to deny Anderson access to the records, the error is harmless beyond a reasonable doubt. His counsel cross-examined Aiesha extensively about both her drug use and her history of mental illness. Aiesha readily admitted that she was clinically depressed, that she was bipolar, that she had experienced post-traumatic stress disorder, and that she suffered from suicidal ideation.

⁴ Welfare and Institutions Code section 5328 generally protects the confidentiality of records relating to psychiatric treatment. Such records may be disclosed "[t]o the courts, as necessary to the administration of justice[.]" (Welf. & Inst. Code, § 5328, subd. (f).) In addition to the foregoing provision, it appears that the records would also be protected by the psychotherapist-patient privilege. (See Evid. Code, §§ 1012, 1014.)

⁵ The People observe that the trial court appears to have followed the procedure outlined in *People v. Reber* (1986) 177 Cal.App.3d 523, 532 for the in camera review of confidential psychotherapy records sought by the defense pretrial to challenge a witness's credibility. *Reber* was overruled in *People v. Hammon* (1997) 15 Cal.4th 1117, 1123-1124, as regards the availability of this discovery pretrial. The trial court may rather have applied its review procedure in reliance on *Reber's* authority, *Davis v. Alaska* (1974) 415 U.S. 308 and on *People v. Hammon, supra*, 15 Cal.4th at page 1117, thereby recognizing appellant's right to this discovery in the *trial* context under the confrontation and compulsory process clauses of the Sixth Amendment.

She also discussed her recent commitment history. In short, Anderson's counsel was able to, and did, challenge Aiesha's credibility based on her history of drug use and mental illness, and the trial court certainly took all of this into account in evaluating Aiesha's testimony. In these circumstances, any alleged error in failing to disclose the records was harmless. (See *Gurule, supra*, 28 Cal.4th at p. 594 [refusal to permit disclosure of all of psychotic witness's psychiatric records was harmless where jury was informed of witness's psychosis, paranoia, auditory hallucinations, and general mental confusion].)

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Gemello, J.